



# PROTECTION OF REFUGEE RIGHTS-AN ANALYSIS

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## ABSTRACT

This article is based on the rights of the refugee which has become the point of global discussions. The jurisprudential aspect behind the law started from the time civil and political wars. The most significant developments in refugee law, however, are closely tied to the two World Wars. After

World War I the League of Nations and the mass expulsions and persecutions before, during and after the Second World War, this has shaped the contours of international refugee law.

This paper tries to examine the international law of refugee protection, focusing on the legal tools, treaties, and national laws which prescribe or implement the obligations of states to refugees, as well as the core protection functions and responsibilities of the Office of the United Nations High Commissioner for Refugees (UNHCR). It first considers the definition of refugee, persecution, and the reasons for persecution as spelled out in the 1951 Convention relating to the Status of Refugees. It then discusses the principle of non-refoulement and UNHCR's responsibility to seek permanent solutions for the problem of refugees, including voluntary repatriation, local asylum, and resettlement. Finally, it looks at the refugee problem in the context of human rights. This paper is solution based trying to overcome the difficulties in protecting the interest of the refugee at international sphere and treating them equally as that of a citizen can avail in a country. The fear of persecution or threat to life or safety arises in the context of an armed conflict, refugee law also intersects with international humanitarian law is tried to be solved through the paper referring to various case law citation.

**KEYWORDS:** Refugee, International law (UNHCR) Convention, Treaties, non-refoulement, Human rights.

## INTRODUCTION:

A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. Fear of persecution has been due to various factors such as race, religion, nationality, political opinion of membership in a particular group. Two-thirds of all refugees worldwide come from just five countries: Syria, Afghanistan, South Sudan, Myanmar and Somalia.

Refugee the concept itself involve two categories one being the political refugee and the other being the socio-economic refugee. Their migration to some or other countries has become a great international concern. Providing human Rights to the Refugee has become one of the prime concerns at international scenario. Article 1 of the United Nations Conventions depicts the position of refugees who borne fear in mind and suffer from being prosecuted on the ground of race, religion, nationality, members of a political social group.

## Constitutional Protection:

Few Articles in Indian constitution has certain provisions for the migrants residing in India. The important provisions are as follows:-

Article 21: Applicable to all irrespective of whether they are citizen of India about their right in terms of life and personal liberty. Many landmark judgements have been given based on Article 21 especially on these categories i.e., refugees.

Article 14: Its emphasis on the right to equality before law and equal protection of law. Article 5- the meaning of citizenship has been stated and it clearly emphasis on citizenship by domicile

Article 6-citizenship of the emigrants from Pakistan has been clearly mentioned in the provision.

Article 7 -citizenship of the migrants to Pakistan ,

Article 8-citizenship of person of Indian origin but residing outside India ,

Article 9-provides that if a person voluntarily acquires the citizenship of any foreign state ,he cannot claim citizenship as per the above stated articles.

Article 10- provides that every person who is or is deemed to be a citizen of India, under any of the foregoing provisions of any law that may be made by the parliament. Thus, in exercise of this power parliament may take away citizenship of any person. But as per section 7 will be considered to be ultra vires of parliament because to allow forcibly removal of Indian citizen from India would tantamount in destroying the right of citizenship which has been conferred by Part 2 of the constitutions.

Article 11 -the right of citizenship cannot be destroyed by an Act made for a different purpose.

Article 12- defines about state, authorities and other authorities

Article 20- Protection in respect of conviction for offences in terms of ex post facto law Clause (1), Double jeopardy clause (2) and Prohibition against self-incrimination clause (3),

Article 22- Safeguards against arbitrary arrest and detention. It focuses two aspects:-

- I) persons arrested under the ordinary law of crimes and
- II) persons detained under "Preventive detention"

Article 25-28: Right to freedom of religion ,

Article 32: Right to move to supreme court by appropriate proceedings,

Article 226- In this provision the court has the jurisdiction to order a person from illegal detention.

All the above stated articles in Indian Constitution are applicable for non-citizen of India including refugees. One of the major leading cases being "Louis De Raedt v. Union of India," where the court was of opinion that the all the above-mentioned fundamental rights are available to both citizens as well as non-citizens of India.

In leading Vishaka case the court said that the "International Conventions and norms are significant for all purpose of interpretation for guaranteeing of gender equality, right to work with human dignity as stated in Article 14, 15, 19(1) (g) and 21 of constitution and safeguarding them against sexual harassment. Some fundamental rights also focussed on rights to the non-citizen of India.

In National Human Right Commission vs. State of Arunachal Pradesh, the govt was directed to safeguard the life and health of refugees (chakmas) those present in the state and that their application for attaining citizenship needs to be sent to the authorities for proper procedure.

The cases and provisions highlight about the intention to help the refugees but due to India's own reason it didn't sign any convention related to it.

## Indian Law:

India have only Asylum and Refugee (Protection Bill) 2009 made and there is specific legislation that has to be enacted regarding refugees in India. But one Act that supports refugee protection is "Foreigners Act 1946" which has a wide demarcation between Alien and Refugee created further prosecution of Refugees.

The law relating to refugee are:

- Citizenship Act 1955
- Extradition Act 1962
- Foreigner's act 1946
- Illegal Migrant Act 1986
- IPC Act 1860
- Passport (Entry into India) Act 1920
- Passport Act 1967
- Protection of Human rights Act 1993
- Registration of Foreigners Act 1939

#### Right of Refugees:

The term Refugee is considered in India to be Alien. This term has been clearly stated under Indian Constitution under Article 22, In U/s 83 of CPC 1908 and u/s 3(2)(b) of Indian citizenship Act 1955 and found in other statutes. Most of the above-mentioned Act created further confusion and complication for Refugee. The Foreigners act 1946 gives an official power to arrest and detain any foreigners under suspicion for noncompliance. Therefore the laws of India still yet doesn't provide ample of protection to Refugees.

1. The Principle of non-refoulement states that no country shall deport, expel or forcefully return back the refugees back to their original territory against his will or if there is a reasonable threat to his life, liberty and freedom.

The role of Judiciary has paved a way in protection of refugees by giving many landmark judgements regarding refugees. The judiciary made it easy with effective steps towards Social Action litigation and Public Interest litigations.

2. Right towards basic amenities:

It was well versed in the case "Digvijay Mote vs. Union of Indian", An NGO was running a school for the Sri-Lankan Refugees. A PIL was filed when the condition to run the school became difficult. Ministry of Women and Social welfare played a vital role by providing financial assistance for proper functioning of those schools.

Refugee right was also cited in the case of "Malavika Karelkar v. Union of India," the deportation order was issued against 21 Burmese refugee which allowed them to seek refugee status in UNHCR.

3. Right to safe asylum: However, international protection comprises more than physical safety. Refugees should receive at least the same rights and basic help as any other foreigner who is a legal resident, including freedom of thought, of movement, and freedom from torture and degrading treatment.
4. Economic and social rights are equally applicable. Refugees should have access to medical care, schooling
5. The right to work.

Conventions on Refugee in 1951 focussed mainly on :-

1. The Personal Status of Refugee-it should be governed by the law of the country if he is domicile or if not by law of country of his residence.
2. Movable and Immovable Property:-
3. Civil Rights
4. Treatment of Refugees:-Article 20-33 laid down the welfare of the refugees
5. Illegal Entry of the Refugees-The contracting state shall not impose any penalty to the refugees who have entered the territory without authorization where their life and freedom is threatened and they show good cause of it to the authority without delay
6. Expulsion of refugee: Article 32 of the convention speaks about that the contracting states cannot expel the refugee but can do so in pursuance of any decision reached in accordance to the due process in law.
7. Travel documents:-Article 28 speaks that the contracting state shall provide travel documents lawfully for staying in their territory for the purpose of travel outside their territory unless a compelling situation of national security or public order hinders to do so.

8. General Obligation:  
The refugees need to abide by the law of the state in which he finds himself
9. Prohibition of Expulsion or Return:  
  
The Convention on Article 33 states that no contracting state has expel or return refugee in any manner whatsoever in the frontiers of the territories where their life or freedom would be threatened.
10. Access to Courts:-The refugee has a right to access courts of law on the territory of the contracting states

#### CONCLUSION:

Although India is not a party to 1951 convention and has not enacted any special law for the protection of refugee. India indirectly has worked for the refugee protection through Part III of the constitutions stating from Article 14 - "Right to equal protection of law to Article 20, 21 and 22 which is strictly for the refugees. In the case of "Louis De Raedt v. Union of India," opined that even an alien cannot be deprived of right to life and personal liberty except according to the procedure established by law. But it has clearly demarcated that Right to life does not include Right to reside and settle in the country as mentioned in Article 19(1)(c) which is only applicable to the citizen of the country. In the case of "Arunachal Pradesh v. Khudiram Chakmas" it was stated that Chakmas are foreigners in accordance with the Citizenship Act 1955 and are not entitled to fundamental Rights.

National Human Right Commission gives more emphasis on protection of refugee rights and dealing cases based on Refugee. It investigates the case Suo moto or on the basis of petition.

#### SUGGESTIONS:

1. There should be a clear-cut demarcation of who are the group to be included in the category of refugee.
2. There should be an independent wing just like UNHCR (UNITED NATION RELIEF AND REHABILITATION ADMINISTRATION) for the work of Refugee.
3. The country should have its own national legislation for safeguarding the interest of the refugee.

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